My view of Clause 37 is that under it both parties could at any time as between themselves have changed the venue of the arbitration and that the only agreement between the parties under the said clause was the submission by either party to arbitration in London according to English law and nothing more. It was no part of the agreement express or implied that legal proceedings could be commenced by either party in the English courts to enforce claims arising under the Charterparty. The reference to "rule of the Court" can only relate to arbitration proceedings and not to legal proceedings in Court intended to adjudicate directly on claims arising under the Charterparty.

In the instant case the Judgment Creditors abandoned their rights of arbitration under the said Clause 37. Once this happened the Judgment Creditors had no other rights accruing to them under the said clause. In the result the Judgment Debtors in my judgment had not under the said Clause 37 submitted themselves to the jurisdiction of the English courts, and so could be sued either in Hong Kong, where the Charterparty was signed, or in Canada, where they are resident and carry on business.

There will therefore be an order in terms of the application. I am obliged to both counsel for their assistance. Costs to the respondents.

Order accordingly.

Solicitors: *Niru & Co.; Lee & Lee.*

ABDUL RAHMAN v. ATTORNEY-GENERAL, SINGAPORE

[A.C.J. (Chua J.) May 20, 1986]

[Singapore – Suit No. 394 of 1984]

Tort – Damages for personal injuries – Admission of liability by defendant – Interlocutory judgment with damages to be assessed – Setting aside interlocutory judgment – Appeal against order of Assistant Registrar.

Government Proceedings – Claim for damages for personal injuries against government – National serviceman – Whether plaintiff on duty at time of accident – Certificate by Minister under s.14(1)(b) of Government Proceedings Act – Government Proceedings Act (Cap. 21) s.14 – Singapore Armed Forces Pensions (Amendment) Regulations, 1981.

The plaintiff, a national serviceman, suffered personal injuries as a result of a collision with a Ministry of Environment lorry driven by an employee of the government. The plaintiff commenced the action for damages on January 19, 1984. When the accident took place on February 5, 1982, the plaintiff had finished the day's duty at 5 p.m and had changed into civilian clothing and left his camp. After entering appearance, the defendant paid $18,000 into Court in satisfaction of the plaintiff's cause of action. The defendant then wrote to the plaintiff's then solicitors stating that the defendant admitted liability. Accordingly no defence was filed and the plaintiff entered interlocutory judgment with damages to be assessed on February 29, 1984. In May 1985, the Singapore Armed Forces paid to the plaintiff the lump sum disability compensation of $15,720.41 for his disability as a result of the accident.

On August 15, 1985 the Minister responsible for finance issued a certificate under section 14(1) (b) of the Government Proceedings Act.

On September 27, 1985, the defendant obtained an order from the Assistant Registrar setting aside the interlocutory judgment. The plaintiff appealed against the decision of the Assistant Registration ordering that: (1) the interlocutory judgment entered on February 29, 1984 be set aside; (2) the sum of $18,000.00 paid into Court by the defendant on February 9, 1985 and accrued interest thereon be paid out to the defendant; (3) there be no order as to the costs of application.

Held, allowing the appeal: (1) the plaintiff was in fact not on duty at the material time nor could he be deemed to have been on duty because he was then not on some land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces;

(2) the certificate issued under section 14(1)(b) erroneously stated that the plaintiff sustained injuries while on duty. The issue of the certificate is a pre-condition to any entitlement to an award. It is clear that the only purpose of the issue was for the government to claim immunity from suit. The certificate was issued 5 months after the decision to make the award was made and was a nullity.

Case referred to:–

(1) *Bell* v. *Secretary of State for Defence* [1985] 3 All E.R. 661.

APPEAL AGAINST ORDER OF ASSISTANT REGISTRAR.

M. A. Valibhoy for the plaintiff.

Charles Lim Heng Cheng (State Counsel) for the defendant.

Cur. Adv. Vult.

Chua J.: This is an appeal by the plaintiff against the decision of the Assistant Registrar ordering that:

(1) the Interlocutory Judgment entered on February 29, 1984 be set aside;

(2) the sum of $18,000.00 paid into Court by the defendant on February 9, 1985 and accrued interest thereon be paid out to the defendant;

(3) there be no order as to the costs of application.

The plaintiff's claim is for damages for personal injuries suffered by him as a result of a collision at Vernon Park on February 5, 1982, with a Ministry of Environment lorry No. YA 4059D driven by one Lee Kong, an employee of the Government. The action was commenced on January 19, 1984.

On February 7, 1984, the defendant entered appearance. On February 9, 1985, the defendant paid the sum of $18,000 into Court in satisfaction of the plaintiff's cause of action. On February 24, 1984, the defendant wrote to the plaintiff's then solicitors stating that the defendant admitted liability and asked that the plaintiff proceed to enter interlocutory judgment with damages to be assessed. No Defence was filed and Interlocutory Judgment was entered against the defendant with damages to be assessed on February 29, 1984. Assessment of damages was fixed for mention on February 23, 1985.

In March 1985 the plaintiff was informed by the Singapore Armed Forces (SAF) that the SAF had decided to award him compensation. On May 3, 1985, the SAF paid to the plaintiff a lump sum disability compensation of $15,720.41 under the SAF Pensions (Amendment) Regulations, 1981, for the disability suffered by the plaintiff as a result of the accident at Vernon Park on February 5, 1982.

On September 27, 1985, the defendant applied by Summons-in-Chambers for, *inter alia,* the Interlocutory Judgment to be set aside and on November 7, 1985, the Assistant Registrar made an order in the terms prayed for.

The plaintiff was enlisted in the full-time National Service from the period June 26, 1980, to June 25, 1982. In February 1982 his duty hours on weekdays were from 7.45 a.m. to 5 p.m.

On February 5, 1982, the plaintiff finished the day's duty at 5 p.m. and thereafter immediately changed into civilian clothing and left Mount Vernon Camp. While walking along Vernon Park, which is a public road just outside the Camp, the accident took place.

It is the contention of the defendant that the Government in this case has a defence under section 14(4) of the Government Proceedings Act (Cap. 21) (the Act) which provides that:

> "No act or omission of a public officer shall subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the forces being a thing as to which the conditions mentioned in subsection (1) or (2) are satisfied."

It is submitted that since the public officer the driver Lee Kong, is not liable, the Government is not liable as its liability is vicarious.

The contention of the plaintiff is that section 14(4) of the Act will protect the tortious public officer only if the conditions in subsections (1) or (2) of section 14 are satisfied.

Section 14 provides as follows:

> "(1) Nothing done or omitted to be done by a member of the forces while on duty as such shall subject either him or the Government to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the forces if –
>
> (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the forces or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the forces, and
>
> (b) the Minister responsible for finance certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under any written law relating to the disablement or death of members of the force of which he is a member.
>
> Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces."

It is submitted that section 14 of the Act, which are provisions relating to the armed forces, is not applicable in this case as at the time of the accident the plaintiff was not on duty, he was not on land used for the purposes of the forces but on a public road, and his injuries were not attributable to service, as required by section 14(1). It is also contended that the certificate issued by the Minister responsible for finance under section 14(1)(b) was a nullity. It is submitted that the issue of such a certificate is a condition precedent to an award. In this case the certificate was issued on August 15, 1985, after the decision to award

compensation was made and after the payment of compensation and that the only purpose of the Minister responsible for finance in issuing the certificate was to claim immunity from suit.

Regulation 2 of the SAF Pensions Regulations, 1978, defines "injuries received in and which are attributable to service" as including injuries received in the following circumstances:–

"(a) whilst on a journey necessary to enable a member to report for service or to return home after service; or

(b) in consequence of some act lawfully performed in the discharge of the member's duties;"

The plaintiff submits that injuries received on his journey home after service are attributable to service but it does not mean that he was on duty.

In support of his arguments counsel for the plaintiff relied on the case of *Bell* v. *Secretary of State for Defence*.[1] In that case, the deceased, who was a serviceman stationed in West Germany, sustained head injuries during horseplay in barracks. He was transferred from the army medical reception centre to a local civilian hospital, but the army doctor failed to provide the hospital with accurate notes of the deceased's injuries with the result that there was a significant delay before the civilian doctors could make an accurate diagnosis. The deceased subsequently died from his injuries. The plaintiff, the deceased's father, suing as administrator of his estate, brought an action for damages against the Secretary of State for Defence under the Law Reform (Miscellaneous Provisions) Act 1934, section 1 alleging, *inter alia*, that the army doctor had been negligent in failing to provide proper medical notes to the civilian hospital and that that had prevented the deceased receiving proper treatment in time. The Secretary of State claimed immunity from suit pursuant to section 10(1) of the Crown Proceedings Act 1947, under which nothing done or omitted to be done by a member of the armed forces while on duty could subject the Crown to liability in tort for causing the death of a person while he was a member of the armed forces if (by section 10(1)(a)) at the time the victim was "either on duty... or (was), though not on duty as such, on any land (or) premises... used for the purposes of the armed forces" and if (by section 10(1)(b)) the Secretary of State certified that the serviceman's death was, for the purposes of "entitlement to an award" under the provisions relating to the disablement or death of members of the armed forces, attributable to his military service. The Secretary of State subsequently issued a certificate pursuant to section 10(1)(b)).

The question whether section 10 gave immunity to the Secretary of State against being vicariously liable for the negligence of the army medical staff was tried as a preliminary issue. The Judge upheld the Secretary of State's claim to immunity and the plaintiff appealed, contending (i) that the certificate issued under section 10(1)(b) was a nullity because there was no one who was entitled to receive an award as the result of the deceased's death, since there was no one who was dependent on him and therefore the only purpose of the Secretary of State in issuing the certificate was to claim immunity from suit, and (ii) that for the purposes of section 10(1)(a) the army doctor's negligence had occurred when the deceased was not on army land but at the civilian hospital.

It was held:

"(1) On the true construction of section 10(1)(b) of the 1947 Act the Secretary of State was entitled to issue a certificate that a serviceman's death was attributable to his service for the purposes of an 'entitlement to an award' even though at the time when the certificate was issued it was clear that there was no one entitled to receive such an award and the only effect of the certificate was to enable the Secretary of State to claim immunity from suit, because the certificate was merely declaratory of the fact that the death was attributable to service and it did not follow that an award would be made if a certificate was issued."

(2) (Sir John Donaldson M.R. dissenting) The injury suffered by the deceased, i.e. the failure by the army doctor to give the civilian hospital accurate information about the deceased, had occurred at the civilian hospital and not on Crown land and accordingly, the Secretary of State was not entitled to claim immunity because under section 10(1)(a) such immunity was restricted to an injury suffered by a serviceman while on duty or while on Crown land. The plaintiff's appeal would therefore be allowed."

Our section 14(1) of the Government Proceedings Act (Cap 21) is similar to section 10(1) of the Crown Proceedings Act 1947.

In dealing with the extent of the immunity under section 10(1), Sir John Donaldson M.R. said (p.665):

"The broad concept underlying the section is simple enough. Where one serviceman, who is on duty, negligently kills or injuries another serviceman, who is also on duty, any compensation shall be provided under the service pension scheme contained in the Order in Council and not under the common law. Difficulties can, however, arise when the serviceman who was killed or injured was not in fact on duty at the relevant time, but is, in effect, deemed to have been on duty because he was then on some land,

premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown. The difficulty lies in determining what is the relevant time.

In the instant appeal Trooper Bell was not in fact on duty at any material time, but he was deemed to be on duty at all times until he was taken from the army vehicle into the German civilian hospital. Thereafter he was neither on duty nor deemed to be on duty. Accordingly it becomes necessary to consider whether the relevant time was before or after his arrival at the hospital. This involves construing para (a) in section 10(1)."

In the instant appeal, the plaintiff was not in fact on duty at the material time nor could he be deemed to have been on duty because he was then not on some land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces.

The certificate issued under section 14(1)(b) erroneously stated that the plaintiff sustained the injuries "whilst on duty". The issue of the certificate is a pre-condition to any entitlement to an award. It is clear that the only purpose of the issue of the certificate was for the Government to claim immunity from suit. In the instant case it was issued 5 months after the decision to make the award was made. In my view the certificate is a nullity.

In the result the appeal is allowed with costs.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

ORCHARD TWELVE INVESTMENTS PTE. LTD. v. GOLDEN BAY REALTY PTE. LTD.

[O.C.J. (Thean J.) May 27, 1986]

[Singapore – Originating Summons No. 654 of 1983]

Contract – Sale of office premises in multi-storey shopping and residential building – Sale and purchase not completed on required date – Production of prior title deeds – Dispute on liquidated damages.

Conveyancing – Sale and purchase not completed on required date – Liquidated damages.

By a sale and purchase agreement dated February 17, 1981, the respondents agreed to sell to the applicants certain office premises known as Lot 1205 (renumbered as 13-05) in a multi-storey shopping and residential building known as "Orchard Tower" in Singapore. The sale and purchase was not completed by the date required because the applicants ("the purchasers") requested for an acknowledgement for production of prior title deeds which the respondents ("the vendors") were not in position to deliver at that time and there was a dispute between them relating to the claim of a sum of $376,874.63 by the purchasers as liquidated damages under clause 14(2) of the Agreement, which reads as follows:

"14(2) The said notice to complete shall be given by the Vendor on or before December 31, 1981. If the Vendor shall fail to give the said notice to complete on the date fixed for completion the Vendor shall pay to the Purchaser liquidated damages calculated from day to day commencing from the date when such notice to complete should have been given at the rate of nine (9) per cent per annum on a sum equal to eighty-five (85) per cent of the purchase price, such interest may be deducted from any instalment due and payable to the Vendor."

The parties subsequently completed the sale and purchase on January 9, 1984. The only question for decision is the liquidated damages under clause 14(2).

Held: (1) the respondents as Vendors have failed to discharge the burden of showing that the delay in completing the sale of the said unit was due to causes beyond their control;

(2) the purchasers were entitled to liquidated damages under clause 14(2) from December 31, 1981, to June 16, 1983, amounting to $376,874.12;

(3) there would be an order that this amount together with interest held by the solicitors for the vendor be paid to the applicants;

(4) the respondents are to pay the costs of these proceedings.

Cases referred to:

(1) *Phoenix Heights Estate (Pte.) Ltd.* v. *Lee Kay Guan & Anor.* [1982] 2 M.L.J. 86.

(2) *Reardon Smith Line* v. *Hansen-Tangen* [1976] 1 W.L.R. 989, 997.

(3) *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage & Motor Co. Ltd.* [1915] A.C. 79, 86.

(4) *Loates* v. *Maple* (1903) 88 L.T. 288, 290.

(5) *Honeywill and Stein* v. *Larkin Brothers* [1934] 1 K.B. 191.

ORIGINATING SUMMONS.

David Lowe Q.C. (*Cheong Yuen Hee* and *Roy Chua* with him) for the applicants.

Leolin Price Q.C. (*Goh Kian Hwee* with him) for the respondents.

Cur. Adv. Vult.

Thean J.: By an Agreement dated February 17, 1981 ("the Agreement"), Golden Bay Realty Pte. Ltd., the abovenamed respondents ("the Vendor")